

REMARKS

Entry of the foregoing amendments and reconsideration of this application are respectfully requested in view of the following remarks. Claims 4-7, 13-27, 29, 31-32 and 35 are pending in the application, with claims 15, 21, 25, and 35 being the independent claims. The Applicants respectfully submit that these amendments introduce no new matter. Based on the above Amendments and the following Remarks, the Applicants respectfully request that the Examiner reconsider and withdraw all outstanding rejections.

Interview Summary

The undersigned would like to thank Examiner Clow for the courtesies extended during the telephonic interview conducted on September 13, 2007. During the interview, the merits of the outstanding rejections and potential claim amendments were discussed.

Information Disclosure Statement

References 77, 80, 86, 139, and 154 were not considered by the Examiner because they lack a publication date. The Applicants note that reference 77 cites to a publication dated 1995. The Applicants also note that reference 80 cites to a publication dated 1986 and reference 154 cites to a publication dated 2001. Additionally, the Applicants note that references 86 and 139 include dates on which such documents were retrieved from the internet. The Applicants submit that such references are published and publicly available at least as of the dates that they were retrieved from the internet. In fact, MPEP Section 707.05(e) provides a manner in which electronic documents may be cited in patent applications. Examples of such citations are also provided. (MPEP Section 707.05(e)). One of such examples, provides a “retrieval from internet” date which appears to be a sufficient “publication date.” (MPEP Section 707.05(e), example 7). Furthermore, reference 86 includes an indication that the reference was published on November 14, 1996.

Accordingly, the Applicants respectfully request that the examiner consider the references.

The Claims As Amended Define Statutory Subject Matter

Claim 35 was rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. As amended, claim 35 now recites “wherein the determining whether the displacement in n-dimensional space of the test centroid exceeds a predetermined distance from the control centroid includes one of: indicating to a user that the bioassay process is functioning properly when the test centroid is within or is equal to the predetermined distance from the control centroid, and indicating to a user that the bioassay process is not functioning properly when the test centroid is beyond the predetermined distance from the control centroid.”

As discussed in the telephonic interview, the Applicants respectfully submit that independent claim 35 is directed to statutory subject matter. Indeed independent claim 35 recites “indicating to a user” which provides for a tangible and useful outcome.

The Applicants submit that the amendments to claim 35 are supported by the specification as filed. For example, paragraph [033] discloses how the distance between the test centroid and the control centroid is determined. Additionally, paragraphs [0041] and [0042] disclose one method of monitoring the distance of the test centroid from the control centroid and what certain trends could indicate. Indeed, paragraph [0041] states “interpreting these plots will enable one to understand where problems may be arising that affect the quality of the system” (emphasis added). Further, the Applicants submit that one of skill in the art would understand from the specification that there is an indication to a user. Indeed, this indication is the very information that is useful in determining when the process is producing inaccurate data that may lead to misdiagnosis as described in paragraph [0006] of the specification as filed.

Accordingly, the Applicants respectfully request that the rejection to claim 35 be withdrawn.

The Claims As Amended Are Definite

Claims 4-7, 13-27, 29 and 31-35 were rejected under 35 U.S.C. § 112, 2nd paragraph as being indefinite.

Specifically, independent claims 15, 21, and 25 were rejected because the claim language was unclear. Upon further review of the language and discussion with the Examiner, the Examiner agrees that the language of independent claims 15, 21, and 25 are sufficiently clear to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. Accordingly, the Applicants respectfully request that the Examiner withdraw the rejection of independent claims 15, 21, and 25, and the claims that depend therefrom.

Additionally, independent claim 35 was rejected because of insufficient antecedent basis. Claim 35 has been amended accordingly. The Applicants respectfully request that the rejection of claim 35 be withdrawn.

CONCLUSION

All of the stated grounds of objection and rejection have been properly traversed or rendered moot. The Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding objections and rejections. Applicants believe that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that further personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.


Prompt and favorable consideration of this Amendment is respectfully requested.

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